



23/09/16



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 531 of 2005

1. Bifaiya, son of Chamra Kodaku, aged 40 years, resident of village Sitarampura Hutaarpara, Police Station Balrampur, District Surguja (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh, through Police Station Balrampur.

---- Respondent

For Appellant:

Smt. S. Shrivastava, Advocate under the authority of Smt. Savita Tiwari, Advocate.

For Respondent;

Shri Adil Minhaj, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Chandra Bhushan Bajpai

Judgement

Pritinker Diwaker, J

20/09/2016

1. This appeal arises out of the judgment of conviction and order of sentence dated 12.5.2005 passed by the Additional Sessions Judge, Link Court, Ramanujganj, District Sarguja in S.T. No.255/04 convicting the accused/appellant under Section 302 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo imprisonment for life & fine of Rs.50,000/-, in default to undergo additional RI for 5 years.
2. The prosecution story, in brief, is that on 13.4.2004 at about 7.00 p.m. when the accused/appellant was sleeping in his house, deceased Sukhmibai, wife of accused/appellant, started talking rubbish which annoyed the accused/appellant and therefore he woke up, picked up the wooden plank lying there and gave heavy blow on the head of deceased

as a result of which she died spontaneously. At the instance of Ramdas (PW-4), merger intimation (Ex.P-3) was lodged on 15.4.2004 at 8.05 p.m. Immediately thereafter at 8.10 p.m. FIR (Ex.P-4) was registered against the accused/appellant under Section 302 IPC. Inquest was prepared vide Ex.P-6 on 15.4.2004. Dead body was sent for post-mortem examination which was conducted by Dr. P.L. Verma (PW-1) on 16.4.2004 vide Ex.P-1 and he noticed one lacerated wound on the left parietal area of 8x 1½ cm size and swelling over the entire left parietal and temporal areas. He opined the cause of death to be syncope & coma due to external & intracranial haemorrhage and injury to brain and the death was homicidal in nature. On completion of investigation, charge sheet for the offence punishable under Section 302 IPC was filed against the accused/appellant and accordingly the charge was framed by the trial Court against the accused/appellant.

3. In order to hold the accused/appellant guilty, the prosecution had examined as many as 08 witnesses. Statement of accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence & false implication.
4. After hearing the parties, the Court below has convicted & sentenced the accused/appellant in the manner as described above.
5. Learned counsel for the accused/appellant submits that even if the entire case of the prosecution is taken as it is, at best the accused/appellant can be convicted under Section 304 Part-II IPC and not under Section 302 IPC, as has been done by the Court below, because the appellant had no intention to commit murder of the deceased. She further submits that appellant has already remained in jail for more than four years and



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therefore after converting his conviction into Section 304 Part-II IPC, he may be sentenced to the period already undergone by him.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court. He further submits that death of deceased has taken place inside the house but the appellant did not offer any explanation as to how the deceased died homicidal death in his house. He further submits that accused/appellant made extra-judicial confession to PW-3 that he has killed the deceased.
7. We have heard learned counsel for the parties and perused the material available on record.
8. Dr. P.L. Verma (PW-1) is the person who conducted post-mortem on the body of deceased and noticed injuries as stated above. This witness has opined that cause of death was syncope & coma due to external & intra cranial haemorrhage and the death was homicidal in nature. The query whether the injury present on the body of the deceased could be caused by the wooden plank produced before him, has been answered by this witness in affirmative. In the cross-examination this witness has stated that after consuming liquor, if any person would fall on the stone, he may receive the injury as has been sustained by the deceased.
9. A.W. Khan (PW-2) is the investigating officer who has duly proved the prosecution case.
10. Fulmaniya (PW-3) is the mother of deceased before whom the accused/appellant has confessed that it is he who had killed his wife i.e. deceased. This witness remained firm in her cross-examination and nothing incriminating could be elicited in her cross-examination which

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makes her testimony unreliable or untrustworthy.

11. Ramdas (PW-4) is the person who lodged the mereg intimation and FIR. This witness has not supported the prosecution case and turned hostile. However, he has stated that after committing murder of deceased, the accused/appellant went to her in-laws house situated in another village.
12. Mangal Sai (PW-5) is the village Sarpanch who had gone to the police station along with accused/appellant. He is also the witness of inquest Ex.P-6, memorandum Ex.P-9 and seizure memo Ex.P-10. He has not supported the prosecution case and turned hostile.
13. Goreram (PW-6) is the village Patel and witness of memorandum Ex.P-9 and seizure memo Ex.P-10. However, this witness did not support the prosecution case and turned hostile.
14. Dhobia (PW-7) did not support the prosecution case and turned hostile.
15. Khitjhu (PW-8) is the village Pradhan and witness of inquest Ex.P-6. This witness did not support the case of prosecution and turned hostile. However, he has stated that accused/appellant came to him and informed that his wife has expired, but he did not inform as to how she died. He has further stated that having been informed by accused/appellant, he went to his house and at that time he was not in the house.
16. Close scrutiny of the evidence available on record, makes it clear that the accused/appellant and the deceased were residing under the same roof, and on the fateful day i.e. on 13.4.2004 at 7.15 p.m. when the deceased received injuries on her body, it is the accused/appellant who alone was present with her. According to post-mortem report (Ex.P-1), injury noticed on the body of the deceased was ante mortem in nature, cause of death was syncope & coma due to head injury and death was homicidal in nature. Thus, once the death is proved to be homicidal, the accused/



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appellant must have come forward with a plausible explanation in his statement under Section 313 Cr.P.C. as to how it occurred because apart from him there was no third person in the house at the relevant time, but he failed to do so.

Another piece of evidence against the accused/appellant is the extra-judicial confession made by him to Fulmaniya (PW-3) who had categorically stated that the accused/appellant came to her house and confessed that he has killed his wife i.e. deceased. This apart, at the instance of accused/appellant one wooden plunk was seized from his possession and the query whether injury present on the body of deceased could be caused by the wooden plunk produced before him, has been answered by the doctor (PW-1) in the affirmative vide Ex.P-2. Thus, on the basis of evidence adduced by the prosecution, the complicity of accused/appellant in commission of offence stands proved beyond all reasonable doubts.

17. Now the question arises for consideration before this Court is whether act of accused/appellant amounts to murder or it falls within any of the Exceptions to Section 300 of the IPC?
18. Evidence available on record reflects that on the fateful day the deceased started talking rubbish to accused/appellant as a result of which he got annoyed and assaulted her with the wooden plunk lying on the spot as a result of which she died on the spot. It is not the case of the prosecution that the appellant had acted cruelly, in the sense that he had delivered successive blows to the deceased, though there was sufficient time and opportunity to the appellant to give repeated blows. It is thus apparent that though the accused/appellant had no intention to cause such bodily injury to the deceased as was likely to result in her death, but has definite



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knowledge that the injury being inflicted by him was likely to cause death of the deceased. As such, the case of accused/appellant would be covered under Section 304 Part-II IPC and not under Section 302 IPC as has been done by the trial Court.

19. In the result, the appeal is allowed in part. Conviction of the accused/appellant under Section 302 IPC is altered to Section 304 Part-II IPC and he is sentenced to undergo RI for 7 years. Considering the fact that appellant has preferred this appeal from jail which shows his critical financial condition and looking to all that, this Court is of the opinion that interest of justice would be served if a waiver is given to the accused/appellant to pay the fine amount imposed by the trial Court. Order accordingly. Putting it straight way, the appellant is not required to pay any fine amount.

20. Accused/appellant is reported to be on bail. Bail bonds of the appellants are cancelled and he is directed to be taken into custody forthwith to serve out the remainder of sentence.

Sd/-
Pritinker Diwaker
Judge

Sd/-
C.B. Bajpai
Judge

roshan/-